STATE OF NEW JERSEY
DIVISION OF GAMING ENFORCEMENT
DOCKET NO.: 11-1410-EL

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT, PETITIONER, v. LAUREN E. PIPPITT, aka JEMMA PIPPITT, RESPONDENT.	FINAL AGENCY DECISION

APPEARANCES: FOR THE DIVISION OF GAMING ENFORCEMENT:
R. LANE STEBBINS, DEPUTY ATTORNEY GENERAL

FOR RESPONDENT:
LAUREN E. PIPPITT, *PRO SE*

BEFORE: JAMES C. FOGARTY
HEARING EXAMINER

HEARING CLERK: KATHRYN DURNING

RECORD CLOSED: APRIL 20, 2012 DECIDED: JULY 3, 2012

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

On October 6, 2011, the Division of Gaming Enforcement ("Division") filed a petition seeking a judgment to have Lauren E. Pippitt, aka Jemma Pippitt, Respondent, placed on the exclusion list pursuant to *N.J.S.A.* 5:12-71 and *N.J.A.C.* 13:69G-1.3(a)4. Thereafter, on February 6, 2012, the Division filed an Amended Petition for exclusion pursuant to

N.J.S.A. 5:12-71 and *N.J.A.C.* 13:69G-1.3(a)3 and -1.3(a)4 because Respondent was convicted of a crime punishable by more than six months in jail and because her presence in a licensed casino establishment would be inimical to the interests of the State of New Jersey or of licensed gaming therein.[1]

Pursuant to *N.J.S.A.* 5:12-107f, I assigned James C. Fogarty as Hearing Examiner on November 2, 2011, replaced him with John E. Adams, Jr., on January 20, 2012, and then, due to Mr. Adams' illness, re-assigned Mr. Fogarty as Hearing Examiner on April 13, 2012.

A Prehearing Conference was held on March 12, 2012, and a Prehearing Order dated March 12, 2012, was entered addressing, among other things, issues to be resolved at the hearing, hearing procedure, burden of proof, interrogatories and answers thereto, exchange of proofs and witness identification. In addition, a hearing was scheduled for April 20, 2012, at 10:30 a.m. at the Division's offices at 1300 Atlantic Avenue, Atlantic City. DAG R. Lane Stebbins and Ms. Pippitt were present at the Prehearing Conference. Settlement discussions between the Division and Respondent have been held but no settlement has been reached.

Mr. Fogarty presided at the hearing held on April 20, 2012, beginning at 11:14 a.m. and ending at 4:11 p.m. in the Division's offices at 1300 Atlantic Avenue, 3rd Floor, Atlantic City. He closed the record at that time. The hearing was transcribed by a certified reporter who produced a 263-page transcript. A List of Exhibits is attached to this Final Decision. An Order granting a thirty day extension of time for the Director to file a Final Agency

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[1]The Amended Petition at paragraphs 2 and 3 incorrectly cited to *N.J.A.C.* 13:69D-1.3a(3) and -1.3a(4).

Decision was granted on June 1, 2012.

The issues set forth for disposition are: Did the Division establish by a preponderance of the evidence that: (A) Respondent was convicted of a criminal offense punishable by more than six months in jail and that her presence in a licensed casino establishment is inimical to the interests of the State of New Jersey and of licensed gaming therein, thus requiring her exclusion pursuant to *N.J.A.C.* 13:69G-1.3(a)(3); or, (B) Respondent's presence in a licensed casino establishment would be inimical to the interests of the State of New Jersey and of licensed gaming therein, thus requiring her exclusion pursuant to *N.J.A.C.* 13:69G-1.3(a)(4)?

PRELIMINARY MATTERS

The hearing did not begin until 11:14 a.m. because Respondent was late. She advised that she thought the hearing was scheduled to start at 11:30 a.m., not 10:30 a.m. as set forth in the Prehearing Order and Hearing Notice dated March 12, 2012, both of which Respondent acknowledged receiving. The Division was present and prepared to proceed at 10:30 a.m. The Hearing Examiner found Respondent's explanation for her tardiness insufficient but took no action with regard thereto.

The Division served interrogatories on Respondent in a timely manner which, as set forth in the Prehearing Order, were to be answered by April 13, 2012. The Division argued at the hearing that Respondent did not properly comply with its requests for answers to interrogatories but declined to make a motion for sanctions or other relief with regard thereto. Respondent served no interrogatories on the Division.

The Division complied with the requirements of the Prehearing Order by timely providing Respondent with evidence it planned to introduce at the hearing and a list of witnesses it planned to call. Respondent provided no evidence to the Division in advance of the hearing. She also failed to introduce any evidence at the hearing, did not call any witnesses to testify on her behalf, and introduced no documentary evidence.

HEARING RULINGS

There follows a number of rulings issued by the Hearing Examiner during the course of the hearing.

1. The Hearing Examiner disallowed the admission into evidence by the Division of Exhibit D-2. Exhibit D-2 is a two-page Orange County (Florida) arrest affidavit purporting to show that Respondent was arrested by the Orange County Sheriff's Office for solicitation to commit prostitution on January 27, 2009. However, upon inquiry, the Hearing Examiner was advised that the Orange County authorities failed to prosecute the arrest and that the Division had been advised that the matter was officially disposed of as "abandoned." Under such circumstances and absent a showing that witnesses to the alleged conduct would be presented and subject to cross-examination at the hearing, the Hearing Examiner disallowed admission into evidence of Exhibit D-2 and, accordingly, dismissed Paragraph 6 of the Amended Petition. I concur.

2. The Hearing Examiner disallowed the admission into evidence by the Division of Exhibit D-8, a two-page incident report. Exhibit D-8 purported to show that Respondent was evicted from Harrah's Atlantic City Hotel and Casino ("Harrah's") on August 1, 2010, for allegedly soliciting for prostitution. However, the Division advised that the Harrah's

security officer involved in the incident was unavailable to testify at the hearing, thus making cross-examination impossible. Under the circumstances, the Hearing Examiner disallowed admission into evidence Exhibit D-8 and, accordingly, dismissed Paragraph 14 of the Amended Petition. I disagree and reverse this ruling.

This material should have been admitted and the Division should have been permitted to cross-examine the Respondent about the alleged incident set forth therein. This material should have been admitted into evidence by the Hearing Examiner pursuant to N.J.S.A. 5:12-107a(6). This provision states "Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action." Respondent admitted at the hearing that Exhibit D-8 was provided in discovery. Respondent's inability to cross-examine the author of the report, who was on medical leave and not able to be present at the hearing, is certainly a factor to be considered in determining what weight to afford the evidence. However, that goes to the weight of the material, not its admissibility. The Division should have been allowed to cross-examine the Respondent regarding the material in Exhibit D-8, and the Exhibit should have been admitted into evidence. See also, Dept of Law & Public Safety v. Merlino, 216 *N.J. Super.* 579, 585 (App Div 1987), *aff'd o.b.* 109 N.J. 134 (1988) (Extensive hearsay documents admissible under Casino Control Act and no residuum of competent evidence required to sustain a finding).

Although I reverse the Hearing Examiner's exclusion of Exhibit D-8, given the ultimate decision in this matter, I will not remand this issue to the Hearing Examiner to

admit and consider the material excluded from evidence. I also will not accord any weight or otherwise rely upon any of the allegations or facts contained in Exhibit D-8 in the ultimate disposition of this contested matter. In an appropriate future case, such evidence should be found to be admissible.

3. The Hearing Examiner disallowed the admission into evidence by the Division of Exhibit D-10, a two-page Harrah's incident report purporting to show that Respondent was evicted on October 3, 2009. The Hearing Examiner stated the Division failed to allege this incident in its Amended Petition and gave no reason why it failed to do so. Indeed, the Division did not move to further amend its Amended Petition at any time prior to the hearing and only did so during the hearing itself and only after its efforts to introduce the evidence were questioned. The record clearly shows that Respondent was provided with the documents prior to the hearing.

I find that the Hearing Examiner's determination to exclude this evidence because it was not specifically referenced in the Division's Amended Petition to be erroneous. As was the case with Exhibit D-8, this material should have been admitted into evidence by the Hearing Examiner pursuant to *N.J.S.A.* 5:12-107a(6). Respondent admitted at the hearing that Exhibit D-10 was provided in discovery.

The Division's Amended Petition specifically seeks "Judgment that the Respondent, Lauren E. Pippitt, is a person whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein..." Similar to a Complaint, a Petition must give notice of the Division's allegations but need not identify with particularity each and every fact. As stated in Division rule *N.J.A.C.* 13:69B-2.1(a)(3), a petition to place a candidate on the exclusion list must set forth "in ordinary and

concise language the grounds for exclusion..." So long as the Respondent was provided with all of the materials which were going to be introduced against her, and as long as she was given notice by the Petition that the Division sought to place her on the Exclusion List because she was alleged to be a person whose presence in a casino would be inimical to the interests of gaming, the Exhibit could be admitted into evidence if relevant to the determination of the ultimate issue. It need not have been specifically identified in the Petition.

In addition, *N.J.A.C.* 1:1-6.2(a) states "Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." Since the Respondent admitted to having received the material in discovery, there would have been nothing prejudicial to allowing the pleadings to be amended at the hearing to conform with the proofs presented. Material not specifically referenced in the Petition, but provided pretrial, can still be relevant to the ultimate issue of the Respondent's presence in a casino being inimical.

This material should have been admitted and the Division should have been permitted to cross-examine the Respondent about the alleged incident. Although I reverse the Hearing Examiner's exclusion of Exhibit D-10, because of the ultimate decision in this matter, I will not remand this issue to the Hearing Examiner to admit and consider the material excluded from evidence. I also will not accord any weight or otherwise rely upon any of the allegations or facts contained in Exhibit D-10 in the ultimate disposition of this case. In an appropriate future case, such evidence should be found to be admissible.

4. Similar to 3 above, the Division sought to introduce into evidence Exhibits D-11(a), (b) and (c) regarding incidents at Bally's Atlantic City Hotel and Casino ("Bally's") on March 29, 2009, September 19, 2010, and September 10, 2010; and Exhibits D-12(a), (b), (c) and (d) regarding incidents at Trump Taj Mahal Hotel and Casino ("Taj Mahal") on August 22, 2009, January 15, 2010, June 11, 2010, and January 15, 2011. The Division again did not allege these particular incidents in its Amended Petition. For essentially the same reasons as noted above, the Hearing Examiner exercised his discretion and did not admit these proffered Exhibits into evidence at the hearing. For the reasons set forth above, I reverse the exclusion of Exhibits D-11 (a), (b) and (c) and Exhibits D-12 (a), (b), (c), and (d) but do not remand because of the ultimate decision in this matter. Just so the record is clear, I will not accord any weight or otherwise rely upon any of the allegations or facts contained in Exhibits D-11 (a), (b), or (c) or Exhibits D-12 (a), (b), (c), or (d) in rendering a decision in this contested case.

5. In Paragraphs 7, 8 and 9 of the Amended Petition, the Division alleged that Respondent was arrested by the Las Vegas Metropolitan Police Department on May 31, 2009, June 21, 2009, and June 22, 2009, for, respectively, loitering for prostitution, soliciting prostitution and trespassing. In support thereof, the Division sought to introduce at the hearing Exhibits D-3(a), (b) and (c) which are identified as "declarations of arrest." However, the Division was unable to establish the disposition of these matters by the appropriate court of law such that it is not clear if these allegations remain pending (and if so, they should be handled by the Las Vegas authorities in the first instance), were dismissed or perhaps Respondent was found not guilty. Moreover, the Division did not produce any witnesses with first-hand knowledge of these allegations, thus making cross-

examination impossible.

On that basis, the Hearing Examiner refused to admit proffered Exhibits D-3(a), (b) and (c) in the Division's case-in-chief. I disagree and reverse. These Exhibits should have been admissible during the Division's case-in chief for whatever weight the Hearing Examiner wished to accord to it. See, *N.J.S.A.* 5:12-107. See also, *Merlino, supra*, 216 *N.J. Super.* at 585. Upon cross-examination of Respondent, she admitted to being arrested by the Las Vegas Police Department on or about the dates alleged and the Hearing Examiner then allowed Exhibits D-3(a), (b) and (c) into evidence.

These Exhibits should have been admitted regardless of whether the Respondent admitted to being arrested in Las Vegas as stated in the documents. Had Respondent denied such facts, the documents would have been available to impeach her credibility. But even without her denial, the documents should have been admitted for whatever weight the Hearing Examiner thought appropriate. Since the Exhibits were ultimately admitted in any event, there is no need to take any corrective measures regarding the failure to admit them during the Division's case-in-chief.

FINDINGS OF FACT

From the record produced during the hearing both documentary and through the testimonies of witnesses and Respondent, I **FIND** the following as facts.

Respondent pled guilty on January 11, 2007, in Berkshire Superior Court, Commonwealth of Massachusetts, to a criminal charge of possession of cocaine with intent to distribute. She was sentenced to, among other things, a one-year term of imprisonment

in the Berkshire County House of Correction. *See* Exhibits D-1(a) and (b).

On August 14, 2009, Respondent was formally evicted from Borgata Casino, Resort and Spa ("Borgata") for solicitation for prostitution of a Borgata security employee working a plain-clothes detail. *See* Exhibit D-4 (redacted). The Borgata security officer, Danny Cardona, testified at the hearing that Respondent solicited him at the B Bar at approximately 4:20 a.m. on Friday, August 14, 2009. Mr. Cardona testified that he subsequently identified himself to Respondent, obtained her identification and a photograph, and that she was read the "Borgata Landlord Act" which essentially advised her that she is being evicted and is no longer allowed on the property. On cross-examination, Respondent questioned the issues of when the report was written and whether the conversation set forth in the report was recorded. The Hearing Examiner overruled her objection to the admissibility of Exhibit D-4.

On November 25, 2009, Respondent was evicted from Resorts Hotel and Casino ("Resorts") for engaging in prostitution at Resorts on November 21, 2009. *See* Exhibits D-5(a), (b), (c) and (d). Darren Tomlinson, a 31-year veteran of Resorts' security and currently a supervisor, testified at the hearing that a male patron had complained to a bartender on November 21, 2009, that a female had stolen something from him. Resorts security was called and, through surveillance cameras, Respondent was identified as being the female described by the patron. Four days later, on November 25, 2009, Mr. Tomlinson spotted Respondent in Resorts and questioned her about the alleged theft from a patron. Mr. Tomlinson advised that Respondent denied stealing anything from the patron but did admit to having contact with the patron for prostitution purposes. Respondent was then evicted from Resorts and advised she was excluded from Resorts and Atlantic City

Hilton Hotel and Casino. On cross-examination, Respondent questioned the issue of whether the patron referenced in the witness' report had made a formal complaint. The witness responded that such complaint was verbal to a security officer but no formal written statement was made. Respondent's objection to the admissibility of Exhibits D-5(a), (b), (c) and (d) was correctly overruled by the Hearing Examiner.

Respondent was arrested by the Atlantic City Police on January 8, 2010, for engaging in prostitution at Resorts in violation of *N.J.S.A.* 2C:34-1b(1), a disorderly persons offense. Det. Sgt. Rodney Ruark testified at the hearing that he and other Atlantic City police officers were working in an undercover capacity at Resorts when he encountered Respondent at approximately 9:15 p.m. on the casino floor and she offered to engage in sexual intercourse for $300.[2] Respondent was found guilty by the Municipal Court of Atlantic City on June 22, 2010, of being in violation of *N.J.S.A.* 2C:34-1b(1), fined in the amount of $1,000, and a thirty (30) day jail sentence was suspended subject to her not entering Resorts for a two-year period. *See* Exhibits D-6(a), (b), (c) and (d). The Respondent did not cross-examine Sgt. Ruark.

On March 11, 2010,[3] Respondent was arrested by the Atlantic City Police at Caesars Atlantic City Hotel and Casino ("Caesars") for engaging in prostitution in violation of *N.J.S.A.* 2C:34-1b(1). At the hearing, Sgt. Andrew Leonard, a 12-year veteran of the police force, testified that while working in an undercover capacity at the Toga Bar he was

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[2]Paragraph 12 of the Amended Petition mistakenly identified the police officer as a New Jersey State Police Detective.

[3]The Amended Petition, at Paragraph 13, incorrectly identified the date of this incident as March 10, 2010.

offered sex by Respondent in exchange for money, specifically oral sex for $200. The matter was disposed of by the Atlantic City Municipal Court on June 22, 2010, the same day as the incident occurring at Resorts on January 8, 2010 (referred to above) was disposed of, and was dismissed in exchange for Respondent's plea of guilty to the Resorts matter. *See* Exhibits D-7(a) and (b). On cross-examination, respondent questioned Sgt. Leonard as to whether their conversation at the time of her arrest was recorded. The officer answered that it was not.

On November 20, 2010, Respondent was charged with disorderly conduct in violation of *N.J.S.A.* 2C:33-2a while at the Xhibition Bar in Harrah's. *See* Exhibits D-9(a) and (b). State Investigator Richard Angioletti testified at the hearing that Respondent and another female were fighting in the bar and each were charged with the offense of disorderly conduct and that Respondent was escorted off the premises. State Investigator Angioletti further testified that Respondent pled guilty to the charge in the Atlantic City Municipal Court on December 1, 2010, was fined a total of $358 and was barred from Harrah's for two (2) years.

In Paragraph 16 of the Amended Petition, the Division alleged that Respondent was arrested and convicted of defiant trespass in violation of *N.J.S.A.* 2C:18-3b (a petty disorderly persons offense[4]) on four occasions -- September 5, 2009, September 19, 2010, October 4, 2010, and February 12, 2011, within licensed casino facilities in Atlantic City. At the hearing, State Investigator Angioletti testified that, in the course of his investigation of these and other matters regarding Respondent, he confirmed by examining

[4]Pursuant to *N.J.S.A.* 2C:43-8, imprisonment for up to 30 days is authorized for a petty disorderly offense.

computerized court records that Respondent was convicted of defiant trespass in the Atlantic City Municipal Court on June 22, 2010 (of the September 5, 2010 incident at Bally's), and on April 18, 2011, of the other three incidents (at Bally's, Caesars and Borgata). He further testified that, according to court records, Respondent was fined and barred by the Court from entering the specified casinos for two years. With the exception of the Caesars incident on October 4, 2010 (*see* Exhibit D-13 in evidence), no documentary proof was offered into evidence by the Division but the Hearing Examiner accepted the uncontroverted testimony of the witness with regard to all of these incidents. So do I.

ANALYSIS

Pursuant to *N.J.S.A.* 5:12-71, *N.J.A.C.* 13:69G-1.3(a)3 (in pertinent part) and -1.3 (a)4 (in pertinent part) provide as follows:

> (a) The exclusion list may include any person who meets any of the following criteria:
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> 3. Any person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than six months of incarceration, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
>
> 4. Any person whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to:
>
> iii. Persons who pose a threat to the safety of the patrons or employees of a casino licensee;

iv. Persons with a documented history of conduct involving the undue disruption of the gaming operations of casino licensees;

I begin by unequivocally stating that the presence of any person who engages in prostitution and/or prostitution-related conduct in New Jersey's licensed casino hotels is clearly inimical within the letter, spirit and intent of the statute and regulation, especially where such conduct is repetitive. Such conduct is not only self-evidently disruptive of a casino licensee's operations but also poses a threat to both patrons and casino employees.

The evidence adduced at the hearing regarding Respondent's conduct convincingly established that she has on four (4) occasions in a period of seven (7) months (August 2009 to March 2010) either been evicted or arrested by police for prostitution-related activities at three (3) different casino hotels.[5] The proofs offered by the Division are compelling in that in three (3) of these incidents, witnesses testified from first-hand knowledge in undercover capacities that Respondent offered sex in exchange for money; in the other, Respondent herself confessed to a security officer that, although she said she did not steal from a male patron, she was engaged in prostitution with him. With regard to this latter incident (Resorts, November 25, 2009 admission to prostitution occurring four days prior), I note that, although any theft by Respondent from a patron was unproven, her prostitution-related activity underscores the threat to safety that is posed by that activity.

In addition to the above, Respondent has demonstrated a history of defiantly

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[5]I take note that Respondent was evicted from Resorts on November 25, 2009, for prostitution-related conduct and was advised not to return; yet, she returned there less than two (2) months later at which time she was arrested by the Atlantic City Police for prostitution on January 8, 2010.

trespassing in the casino hotels as evidenced by her four convictions for this offense at Bally's, Caesars and Borgata occurring between September 2009 and February 2011. Thus, it is clear that Respondent repeatedly ignored numerous actual notices not to re-enter a casino hotel for which she was thereafter convicted by the Municipal Court of the offense of defiant trespass. Moreover, Respondent's conduct at Harrah's on November 20, 2010, where she was involved in a physical altercation with another in the Xhibition Bar resulting in her arrest and conviction for disorderly conduct, is further proof that indeed her behavior was disruptive and unsafe and that her presence in licensed casino hotels is indeed inimical.

In rendering this decision, I in no way accorded any weight to, or relied upon the facts set forth in Exhibits D-8; D-10; D-11 (a), (b) or (c); or Exhibit D-12 (a), (b), (c), or (d). Although those documents should have been admitted into evidence, Respondent did not have the opportunity to respond to them and I therefore reach my decision without considering those Exhibits.

I am fully aware that the above-described conduct by Respondent are not crimes. However, the cited statute and regulation do not require evidence of a crime, only that it be inimical. Her extensive record of prostitution-related activity and defiant trespass is indeed inimical and cannot be allowed to continue. The time has clearly arrived for Respondent to be barred from all casino hotels under the enhanced penalty available by placing her on the exclusion list.

Finally, the Division's admitted proofs with regard to Respondent having been convicted of a criminal offense punishable by more than six (6) months of incarceration in the Commonwealth of Massachusetts in 2007 provides an independent basis for exclusion

pursuant to the criterion set forth under *N.J.A.C.* 13:69G-1.3(a)3.

DISPOSITION

I **CONCLUDE** that the Division has established by a preponderance of the evidence that Respondent's presence would be inimical pursuant to *N.J.A.C.* 13:69G-1.3(a)3 and that Respondent's name should be placed on the exclusion list pursuant to *N.J.S.A.* 5:12-71 and *N.J.A.C.* 13:69G-1.1 *et seq.* I further conclude that the Division has established by a preponderance of the evidence that Respondent's presence would be inimical pursuant to *N.J.A.C.* 13:69G-1.3(a)4 and that Respondent's name should be placed on the exclusion list pursuant to *N.J.S.A.* 5:12-71 and *N.J.A.C.* 13:69G-1.1 *et seq.*

On this date, I hereby issue this Final Decision and **ORDER** that the name of Lauren E. Pippitt be placed on the exclusion list pursuant to *N.J.S.A.* 5:12-71 and *N.J.A.C.* 13:69G-1.1 *et seq.* and that, pursuant to *N.J.A.C.* 13:69G-1.8(b), Respondent is hereby **NOTICED** that she is excluded for a minimum period of five (5) years after which she may petition the Division for a hearing concerning her removal from the exclusion list. Respondent is **FURTHER NOTICED** that, pursuant to *N.J.S.A.* 5:12-118, her entry on the premises of any licensed casino hotel in Atlantic City while she is on the exclusion list is a fourth degree crime which, pursuant to *N.J.S.A.* 2C:43-6a(4), is punishable by imprisonment of up to 18 months.

As set forth in *N.J.A.C.* 13:69B-2.13, Respondent may appeal this Final Decision of the Director to the Casino Control Commission pursuant to *N.J.S.A.* 5:12-63(1)b(v) within thirty (30) days from the date hereof with notice of the appeal sent to the Division.

July 3, 2012
Date

DAVID REBUCK
DIRECTOR